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Attorneys for Defendant UNITED
STATES OF AMERICA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOHN STASSEN,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CASE NO. 17-cv-05869 LB

**JOINT CASE MANAGEMENT CONFERENCE
STATEMENT; ~~PROPOSED~~ ORDER**

Date: February 22, 2018

Time: 11:00 a.m.

Honorable Laurel Beeler

The parties to the above-captioned action jointly submit the following Joint Case Management Conference Statement.

1. JURISDICTION AND SERVICE: All defendants have been served and have appeared. This Court has jurisdiction over plaintiff's Federal Tort Claims Act claims under 28 U.S.C. § 1346(b).

2. FACTS:

Plaintiff alleges that, on May 27, 2016, he had a bicycle accident on the pathway that runs along the waterfront of San Francisco Maritime National Historical Park. Plaintiff alleges that the accident was caused by railroad tracks that are blended into the pathway, but which had become exposed because of a deterioration of the pavement adjacent to the track. Plaintiff alleges that he was seriously injured in the accident, including causing a right pneumothorax.

1 The United States notes that the exposed, historical State Belt Line railroad tracks, which ran
2 along the promenade at Aquatic Park, were incorporated into the park by design. The National Park
3 Service chose to preserve these tracks in light of their historic and cultural significance. That said, at the
4 time of plaintiff's accident, the tracks were slated to be removed, and were subsequently removed.

5 **3. LEGAL ISSUES:**

6 Plaintiff's Statement of Legal Issues in Dispute.

- 7 1) Whether defendant is liable for plaintiff's damages pursuant to the Federal Tort Claims
8 Act, 28 U.S.C. §§ 2671 *et seq.*

9 Defendant's Statement of Legal Issues in Dispute.

- 10 1) Whether California's doctrine of recreational use immunity bars plaintiff's claims. Cal.
11 Civ. Code § 846.
12 2) Whether the discretionary function exception to the Federal Tort Claims Act bars plaintiff's
13 claims. 28 U.S.C. § 2680(a).

14 **4. MOTIONS:** No motions are currently pending. The parties reserve their rights to bring all
15 appropriate motions.

16 **5. AMENDMENT OF PLEADINGS:** The parties suggest an amendment deadline of May 31,
17 2018.

18 **6. EVIDENCE PRESERVATION:** The parties will take all necessary steps to preserve
19 evidence, including electronically stored data.

20 **7. DISCLOSURES:** The parties will exchange initial disclosures by March 9, 2018.

21 **8. DISCOVERY:** No discovery has yet taken place. No alterations to the Federal Rules are
22 proposed.

23 **9. CLASS ACTIONS:** This is not a class action.

24 **10. RELATED CASES:** None.

25 **11. RELIEF:** Plaintiff prays for relief as described in his complaint; defendant prays that he
26 take nothing.

27 **12. SETTLEMENT AND ADR:** The parties have not yet had any settlement discussions. The
28 parties request that they be referred to a settlement conference with a magistrate judge, to occur after

1 some initial discovery (about five months out).

2 **13. CONSENT TO A MAGISTRATE JUDGE FOR ALL PURPOSES:** All parties have
3 consented to proceed before a magistrate judge.

4 **14. OTHER REFERENCES:** None requested.

5 **15. NARROWING OF ISSUES:** The parties stipulate that the First Cause of Action
6 (Dangerous Condition of Public Property) should be dismissed without prejudice. The cause of action
7 for negligence will remain.

8 **16. EXPEDITED TRIAL PROCEDURE:** Not applicable.

9 **17. SCHEDULING:** The complaint in this matter was filed on October 12, 2017; the United
10 States was served on November 17, 2017; and answered on January 16, 2018. The parties request a
11 settlement conference with a magistrate judge to occur in August or September 2018. If the Court is
12 inclined to set a trial date at this juncture, the parties request a trial date in April or May 2019.

13 **18. TRIAL:** There is no right to trial by jury under the Federal Tort Claims Act. *See* 28 U.S.C.
14 § 2402.

15 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES/PERSONS:** Nothing to
16 disclose. Local Rule 3-15 does not apply to governmental entities, such as the United States, or their
17 agencies.

18 **20. PROFESSIONAL CONDUCT:** The parties have reviewed the Guidelines for Professional
19 Conduct for the Northern District of California.

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21 DATED: February 8, 2018

Respectfully submitted,

22 ALEX G. TSE
23 Acting United States Attorney

24 /s/ Wendy M. Garbers
25 WENDY M. GARBERS
26 Assistant United States Attorney
27 Attorneys for the UNITED STATES
28

1 DATED: February 8, 2018

EMERGENT LLP

2 By: /s/ Seth I. Rosenberg*

3 SETH I. ROSENBERG

4 Attorney for PLAINTIFF

5 **In compliance with Civil Local Rule 5-1(i)(3), the filer of this document attests under penalty of perjury*
6 *that each signatory has concurred in the filing of this document.*

7 **~~[PROPOSED]~~ ORDER**

8 PURSUANT TO STIPULATION, plaintiff's First Cause of Action (Dangerous Condition of
9 Public Property) is hereby dismissed without prejudice, each side to bear their own costs and attorneys'
10 fees.

11 IT IS SO ORDERED

12 Dated: February 22, 2018

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14 

15 HONORABLE LAUREL BEELER
16 United States Magistrate Judge Judge